

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Richard Merrick, M.D.,
Plaintiff

v.

Case No. 10-cv-55-SM


Littleton Hospital Association
d/b/a Littleton Regional Hospital,
Warren West, and Linda Gilmore,
Defendants

O R D E R

Re: (Document No. 18), Defendants' "Daubert Motion" to Exclude
Unreliable and Irrelevant Testimony of Dr. Mort Doran

Ruling: Denied, without prejudice to renewing at the time
of trial. Defendants' motion and supporting memorandum discloses
that the witness, Dr. Doran, is expected to offer opinion
testimony to the effect that ". . . a physician is capable of
functioning with Tourette's syndrome, a premise the Defendants do
not dispute and which is not in issue in this case." While
defendants do go on to seemingly dispute the premise, accepting
that defendants agree that a physician is capable of functioning
with Tourette's syndrome, and to the extent Dr. Doran's expected
opinion is not an issue, defendants are free to concede the point
(but plaintiff of course remains able to present his case as he
deems best, within reason and subject to the court's control).
But, more importantly, there is no reason to exclude opinion

testimony pursuant to Daubert that defendants do not contest.
Whether the expected opinion is relevant, a different matter, can
be determined at trial when the evidentiary context is clear.


Steven J. McAuliffe
Chief Judge

March 23, 2011

cc: David P. Slawsky, Esq.
David W. McGrath, Esq.
Edward M. Kaplan, Esq.